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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/039,047	12/31/2001	Lee Friedman	36968/258392 (BS01155)	2287
23552	7590	11/30/2006	EXAMINER	
MERCHANT & GOULD PC P.O. BOX 2903 MINNEAPOLIS, MN 55402-0903			REILLY, SEAN M	
			ART UNIT	PAPER NUMBER

2153.

DATE MAILED: 11/30/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b>	<b>Applicant(s)</b>	
	10/039,047	FRIEDMAN, LEE	
	<b>Examiner</b>	<b>Art Unit</b>	
	Sean Reilly	2153	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 11 September 2006.
- 2a) ☒ This action is **FINAL**.                      2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 6, 7, 9, 10, 13, 19, 36, 37 and 39 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 6-7, 9-10, 13, 19, 36-37, and 39 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |  |   |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)                     | 4) <input type="checkbox"/> Interview Summary (PTO-413)           |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | Paper No(s)/Mail Date. _____                                      |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)          | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| Paper No(s)/Mail Date _____  | 6) <input type="checkbox"/> Other: _____                          |

### DETAILED ACTION

This Office action is in response to Applicant's amendment and request for reconsideration filed on September 11, 2006. Claims 6-7, 9-10, 13, 19, 36-37, and 39 are presented for further examination. Claim 13 has been amended. The amendments to claim 13 have overcome the outstanding claim objections.

#### *Declarations 37 CFR 1.131*

The declaration filed on September 11, 2006 is deficient and fails to overcome the Bahadiroglu (U.S. Patent Application Publication 2002/0186660; hereinafter Bahadiroglu) reference. Accordingly the outstanding rejection is **MAINTAINED**.

The evidence submitted appears to be sufficient for establishing conception of claims of 6-7, 9-10, 13, 19, 36-37, and 39 however the evidence is **insufficient for establishing diligence** from a date prior to the date of reduction to practice of the Bahadiroglu reference to either a constructive reduction to practice or an actual reduction to practice.

A conception of an invention, though evidenced by disclosure, drawings, and even a model, is not a complete invention under the patent laws, and confers no rights on an inventor, and has no effect on a subsequently granted patent to another, **UNLESS THE INVENTOR FOLLOWS IT WITH REASONABLE DILIGENCE BY SOME OTHER ACT**, such as an actual reduction to practice or filing an application for a patent. *Automatic Weighing Mach. Co. v. Pneumatic Scale Corp.*, 166 F.2d 288, 1909 C.D. 498, 139 O.G. 991 (1st Cir. 1909). What is meant by diligence is brought out in *Christie v. Seybold*, 1893 C.D. 515, 64 O.G. 1650 (6<sup>th</sup> Cir.

Art Unit: 2153

1893). In patent law, an inventor is either diligent at a given time or he is not diligent; there are no degrees of diligence. An applicant may be diligent within the meaning of the patent law when he or she is doing nothing, if his or her lack of activity is excused. Note, however, that the record must set forth an explanation or excuse for the inactivity; the USPTO or courts will not speculate on possible explanations for delay or inactivity. See *In re Nelson*, 420 F.2d 1079, 164 USPQ 458 (CCPA 1970).

Applicant has failed to provide **any affirmative acts or acceptable excuses** between the extremely long five-month period which diligence is required. For instance Applicant failed to provide a single affirmative act or acceptable excuse during the period between June 12, 2001 and November 2, 2001. Applicant must submit further **affirmative acts or acceptable excuses** during the period which diligence is required in order to account for these large gaps of inactivity.

Applicant is invited to review MPEP 715.07 for further guidance.

### ***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

1. **Claims 6, 7, 9, 10, 36, 37, and 39, are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai et al. (U.S. Patent Number 6,594,699; hereinafter Sahai) and**

**Natarajan et al. (U.S. Patent Number 6,539,427; hereinafter Natarajan) and Bahadiroglu (U.S. Patent Application Publication 2002/0186660; hereinafter Bahadiroglu).**

2. With regard to claims 6 and 36, Sahai disclosed a method executed by a distribution device of adapting data according to quality of service parameters associated with a plurality of network segments that are downstream from the distribution device, comprising:

- receiving at the distribution device instructions (user sends client capabilities, preferences, and specifications Col 3, lines 10-12, Col 4, lines 9-11), wherein the instructions instruct the distribution device to adapt the data (see the various parameters in Columns 3 and 4 );
- adapting the data to conform to the quality of service parameters associated with each network segment (adapting to the client capabilities and user specifications) (Col 5, lines 41-45), and
- transmitting the adapted data along the network segment based on at least one of the plurality of disparate routing parameters (streaming the content) (Col 5, lines 41-45).

Sahai disclosed the invention substantially as claimed however, Sahai failed to specifically recite receiving the data from a sending device (i.e. Sahai failed to recite the data sending device is an intermediary network device that receives data from another source). In an analogous networking art, Natarajan disclosed a plurality of networking devices (elements, Col 7, lines 21-30) which receive data from a sending source (any networking device upstream), convert the data to conform to a set of parameters associated with the network segment (operational parameters), and transmit the adapted data along the network segment (transmit data downstream) (Col 8, lines 9-29). Natarajan further disclosed that the configuration of such

Art Unit: 2153

network devices ensures that various aspects of the network conform to desired performance criteria (Col 7, lines 17-20). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to extend the data adaptation system disclosed by Sahai to intermediate networking device as disclosed by Natarajan, in order to ensure each aspect of the network conforms to a desired performance (Natarajan Col 7, lines 17-20).

Sahai also failed to specifically recite requesting new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment.

Nonetheless it was widely known in the art at the time of the invention to dynamically adapt data upon detecting changes in the quality of service parameters for each network segment, as evidenced by Bahadiroglu. In an analogous art, Bahadiroglu disclosed a system for transmitting data between sending and receiving nodes (abstract). Bahadiroglu's system requests new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment (i.e. adjusting the packet size and inter-packet interval in real time according to bandwidth restrictions of the network segment such as latency, jitter and traffic conditions ¶ 71). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the packet sizing functionality disclosed by Bahadiroglu, within the combined Sahai and Natarajan system, in order to ensure the available bandwidth is maximized (Bahadiroglu ¶71).

3. With regard to claims 7 and 37, Bahadiroglu disclosed adjusting packet size according to bandwidth restrictions of each network segment (latency, jitter and traffic conditions) (¶ 70).

Art Unit: 2153

4. With regard to claims 9, 19, 30, and 39, Sahai disclosed adapting the data further comprises replicating the data (the content is never changed, just the form of the content changes).

5. With regard to claims 10 and 40, Natarajan disclosed transmitting the set of parameters from the distribution device to a network administrator (Col 27, lines 56-60).

**6. Claims 13 and 19 are rejected under 35 U.S.C. 103(a) as being unpatentable over Sahai et al. (U.S. Patent Number 6,594,699; hereinafter Sahai) and Bahadiroglu (U.S. Patent Application Publication 2002/0186660; hereinafter Bahadiroglu).**

7. With regard to claims 13, Sahai disclosed a system for transmitting data from server to a receiving device located at the end of disparate segments of a communications network, comprising:

- a network device (e.g. client) for distributing a instructions, wherein the plurality of instructions are for adapting the data according to quality of server parameters associated with the disparate segments (see Columns 3 and 4 capabilities and user specifications), and
- a media server (Figure 1, Component 10) for receiving instructions from the network device (user sends client capabilities, preferences, and specifications Col 3, lines 10-12, Col 4, lines 9-11), implementing the instructions to adapt the data according to the quality of service parameters (adapting to the client capabilities and user specifications) (Col 5, lines 41-45), and transmit the adapted data along the disparate network segments to the receiving device (streaming the content) (Col 5, lines 41-45).

Sahai disclosed the invention substantially as claimed however, Sahai failed to specifically recite requesting new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment. Nonetheless it was widely known in the art at the time of the invention to dynamically adapt data upon detecting changes in the quality of service parameters for each network segment, as evidenced by Bahadiroglu. In an analogous art, Bahadiroglu disclosed a system for transmitting data between sending and receiving nodes (abstract). Bahadiroglu's system requests new programming for adapting the data upon detecting changes in the quality of service parameters for each network segment (i.e. adjusting the packet size and inter-packet interval in real time according to bandwidth restrictions of the network segment such as latency, jitter and traffic conditions ¶ 71). Thus, it would have been obvious to one of ordinary skill in the art at the time of the invention to incorporate the packet sizing functionality disclosed by Bahadiroglu, within the combined Sahai and Natarajan system, in order to ensure the available bandwidth is maximized (Bahadiroglu ¶71).

8. With regard to claim 19, Sahai disclosed adapting the data further comprises replicating the data (the content is never changed, just the form of the content changes).

### ***Conclusion***

9. The prior art made of record, in PTO-892 form, and not relied upon is considered pertinent to applicant's disclosure.



**THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

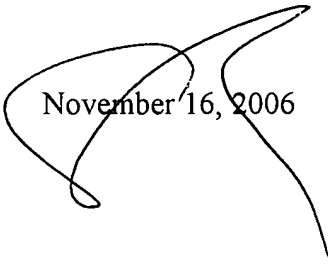
A shortened statutory period for reply to this final action is set to expire **THREE MONTHS** from the mailing date of this action. In the event a first reply is filed within **TWO MONTHS** of the mailing date of this final action and the advisory action is not mailed until after the end of the **THREE-MONTH** shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than **SIX MONTHS** from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Sean Reilly whose telephone number is 571-272-4228. The examiner can normally be reached on M-F 8-5.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Glen Burgess can be reached on 571-272-3949. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Art Unit: 2153

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).



November 16, 2006



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